

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

15-CR-143-V

JOSE RUBEN GIL,
HERMAN E. AGUIRRE,
TROY R. GILLON,
DEMETRIUS YARBOROUGH, and
RASHAWN CRULE,

Defendants.

GOVERNMENT'S EXPERT DISCLOSURE

THE UNITED STATES OF AMERICA, by and through its attorneys, James P. Kennedy, Jr., United States Attorney for the Western District of New York, and Meghan A. Tokash and Michael P. Felicetta, Assistant United States Attorneys, of counsel, hereby submits its expert disclosure pursuant to Rule 16(a)(1)(G) of the Federal Rules of Criminal Procedure, and requests leave to submit such other disclosures as may be appropriate prior to or at the close of the evidence. The government will be calling witnesses pursuant to Rule 702 of the Federal Rules of Evidence as they will have specialized knowledge and/or provide expert testimony about matters which will assist the trier of fact to understand the evidence and/or to determine a fact in issue. The witnesses will be as follows:

1. MEGGAN L. MACOMBER, FORENSIC SCIENTIST, Nebraska State Patrol Crime Laboratory Division, Lincoln, Nebraska

Ms. Macomber, will testify that she is a Forensic Scientist employed by the Nebraska Patrol Crime Laboratory Division, Lincoln, Nebraska. As such, she is certified, trained and experienced in the determination, testing and analysis of controlled substances, including cocaine. Ms. Macomber will testify as to her training, experience and education in that regard.

Ms. Macomber will testify as to the analysis she performed on items of evidence submitted in this case and provided during discovery, including that evidence contained in Case Number H2014-13692. The items she received related to the seizure of 18 suspected kilograms of drugs seized from a vehicle driven by Sonia Hernandez. Ms. Macomber will testify, in her opinion, formed through her training, experience and analysis, as to the type and quantity of drug evidence submitted. These opinions will be consistent with the opinions set forth in the lab reports at issue, which are indicated by the following:

LIMS No. 2017-SFL2-01366

1. Exhibit 18 – analyzed and found to consist of cocaine, a federally controlled substance, and weighing 997.51 grams;
2. Exhibits 3A through and including 3J – analyzed and found to consist of heroin, a federally controlled substance.
3. Exhibit 3K through and including 3P – analyzed and found to consist of cocaine, a federally controlled substance;
4. Exhibit 3H – re-analyzed and found to consist of heroin, a federally controlled substance, and weighing 998.13 grams;

The aforementioned Report, has been provided to the defense and Ms. Macomber qualifications will be provided to the defense.

2. KAITLIN DROLLETTE, FORENSIC CHEMIST II, County of Erie Department of Central Police Services Forensic Laboratory, Buffalo, New York

Ms. Drollette will testify that she is a Senior Forensic Chemist II employed by the Erie County Central Police Services, Buffalo, New York. As such, she is certified, trained and experienced in the determination, testing and analysis of controlled substances, including cocaine and cocaine base. Ms. Drollette will testify as to her training, experience and education in that regard.

Ms. Drollette will testify as to the analysis she performed on items of evidence submitted in this case and provided during discovery, including that evidence contained in Lab No. 15-0820654. Ms. Drollette will testify, in her opinion, formed through her training, experience and analysis, as to the type and quantity of drug evidence submitted. These opinions will be consistent with the opinions set forth in the lab reports at issue, including:

1. CEDCPSF Lab No. 15-0820654, Report Number 1, Lab Item 1—consisted of five (5) plastic bags, one of which was tested, containing a solid substance, which was analyzed and found to consist of cocaine, a federally controlled substance, and weighing 1002.5 grams (+/- 1.2 grams);
2. CEDCPSF Lab No. 15-0820654, Report Number 1, Lab Item 2—consisted of nine (9) plastic bags containing a solid substance, which was analyzed and found to consist of fentanyl, a federally controlled substance, and weighing 998.3 grams (+/- 1.2 grams); and
3. CEDCPSF Lab No. 15-0820654, Report Number 1, Lab Item 3—consisted of eighteen (18) plastic bags containing a solid substance, which was analyzed and found to consist of cocaine, a federally controlled substance, and weighing 977.6 grams (+/- 1.2 grams).

The aforementioned Reports, have been provided to the defense and Ms. Drollette's qualifications will be provided to the defense.

3. RACHEL REDMOND, SENIOR CRIMINALIST, Los Angeles County Sheriff's Department Scientific Laboratory, Los Angeles, California

Ms. Redmond will testify that she is a Senior Criminalist employed by the Los Angeles County Sheriff's Department Scientific Laboratory in Los Angeles, California. As such, she is certified, trained and experienced in the determination, testing and analysis of controlled substances, including cocaine and cocaine base. Ms. Redmond will testify as to her training, experience and education in that regard.

Ms. Redmond will testify as to the analysis she performed on items of evidence submitted in this case and provided during discovery. Ms. Redmond will testify, in her opinion, formed through her training, experience and analysis, as to the type and quantity of drug evidence submitted. These opinions will be consistent with the opinions set forth in the lab reports at issue, including:

1. Los Angeles County Lab No. 14-0320 – seven (7) suspected kilograms of cocaine weighing 7,495 grams, of which five (5) were tested and confirmed to contain cocaine, weighing 5,011 grams.

Ms. Redmond's qualifications will be provided to the defense.

4. CRIMINALIST (TBD), Los Angeles County Sheriff's Department Scientific Laboratory, Los Angeles, California

A Criminalist employed by the Los Angeles County Sheriff's Department Scientific Laboratory in Los Angeles, California will be called by the government to offer testimony about 21 kilos of cocaine seized on April 29, 2015 by Montebello Police officers from Roberto

Tenas. Additional information will be forwarded to the defense about this witness and their laboratory findings upon receipt by the government.

5. STEPHEN J. EVERS, FORENSIC CHEMIST II, County Of Erie Department Of Central Police Services Forensic Laboratory, Buffalo, New York

Mr. Evers will testify that he is a forensic chemist II employed by the County of Erie Department of Central Police Services Forensic Laboratory in Buffalo, New York at the time he tested the submitted substances in question. As such, he is certified, trained and experienced in the determination, testing and analysis of controlled substances, including cocaine and cocaine base. Mr. Evers will testify as to his training, experience and education in that regard.

Mr. Evers will testify as to the analysis he performed on several items of evidence submitted in this case and provided during discovery, including that evidence contained in the identified cases below. Mr. Evers will testify, in his opinion, formed through his training, experience and analysis, as to the type and quantity of drug evidence submitted. These opinions will be consistent with the opinions set forth in the lab reports at issue, including:

1. CEDCPSFL Lab Case No. 15-00965, Report Number 1, Item 11—consisted of a sealed bag containing a solid substance which was analyzed and found to consist of heroin, a federally controlled substance, and weighing 99.00 grams (+/-0.12 grams); and
2. CEDCPSFL Lab Case No. 13-2820714, Report Number 2, Item 2—consisted of a sealed bag containing a substance which was analyzed and found to consist of cocaine, a federally controlled substance, and weighing less than 1/8 ounce.

The aforementioned Reports, have been provided to the defense and Mr. Evers's qualifications will be provided to the defense.

6. JODI LUEDEMANN, FORENSIC BIOLOGIST II, County of Erie Department of Central Police Services Forensic Laboratory, Buffalo, New York

Ms. Luedemann will testify that she is a Senior Forensic Biologist II employed by the Erie County Central Police Services, Buffalo, New York. As such, she is certified, trained and experienced in the determination, testing and analysis of DNA profiles. Ms. Luedemann will testify as to her training, experience and education in that regard.

Ms. Luedemann will testify as to the analysis she performed on items of evidence submitted in this case and provided during discovery, including that evidence contained in Lab No. 15-00965. Ms. Luedemann will testify, in her opinion, formed through her training, experience and analysis, that the DNA profile obtained from a plastic cup used by defendant Troy Gillon cannot be excluded as the source of the major portion of the genetic material found on an outer bag that contained heroin. These opinions will be consistent with the opinions set forth in the lab reports at issue, including:

1. CEDCPSF Lab No. 15-00965, Report Number 4, Lab Items 11.2 and 12— DNA was extracted from the cup abandoned by Troy Gillon (Item #12) and the DNA profile obtained from the inner bag of heroin (Item #11.2) is a mixture of DNA from at least three individuals, including at least one male individual. The major DNA profile matches the DNA profile obtained from the cup abandoned by Troy Gillon (Item #12). The probability of randomly selecting an unrelated individual with a DNA profile that matches the major DNA profile obtained from the inner bag (Item #11.2) is at least 1 in 1.626×10^{11} (1 in 162.6 Billion) for U.S. individuals. The source of DNA profile obtained from the cup abandoned by Troy Gillon (Item #12) cannot be excluded as the source of the major portion of the genetic material in this specimen.

The aforementioned Report, have been provided to the defense and Ms. Luedemann's qualifications will be provided to the defense.

7. AMANDA FINBAR, FORENSIC BIOLOGIST III, County Of Erie Department Of Central Police Services Forensic Laboratory, Buffalo, New York

Ms. Finbar will testify that she is a Senior Forensic Biologist III employed by the Erie County Central Police Services, Buffalo, New York. As such, she is certified, trained and experienced in the determination, testing and analysis of DNA profiles. Ms. Finbar will testify as to her training, experience and education in that regard.

Ms. Finbar will testify as to the analysis she performed on items of evidence submitted in this case and provided during discovery, including that evidence contained in Lab No. 15-0820654. Ms. Finbar will testify, in her opinion, formed through her training, experience and analysis, about the results of testing of several items of evidence compared to known buccal swabs. These opinions will be consistent with the opinions set forth in the lab reports at issue, including:

2. CEDCPSF Lab No. 15-01691, Report Number 2
3. CEDCPSF Lab No. 15-01691, Report Number 3

The aforementioned Reports, have been provided to the defense and Ms. Finbar's qualifications will be provided to the defense.

8. MARK R. SHAW, FORENSIC SCIENTIST, Niagara County Sheriff's Office Forensic Laboratory, Lockport, New York

Mr. Shaw will testify that he was a forensic scientist employed by the Niagara County Sheriff's Office Forensic Laboratory, Lockport, New York at the time he tested the submitted substances in question. As such, he is certified, trained and experienced in the determination, testing and analysis of controlled substances, including cocaine and cocaine base. Mr. Shaw will testify as to his training, experience and education in that regard.

Mr. Shaw will testify as to the analysis he performed on several items of evidence submitted in this case and provided during discovery, including that evidence contained in the identified cases below. Mr. Shaw will testify, in his opinion, formed through his training, experience and analysis, as to the type and quantity of drug evidence submitted. These opinions will be consistent with the opinions set forth in the lab reports at issue, including:

1. NCSOFL Lab Case No. 150378, Report Number 1

The aforementioned Report, have been provided to the defense and Mr. Shaw's qualifications will be provided to the defense.

9. CHARLES CUSUMANO, SENIOR FORENSIC CHEMIST, U.S. Department Of Justice Drug Enforcement Administration Northeast Laboratory, New York, New York

Mr. CUSUMANO will testify that he is a senior forensic chemist employed by the U.S. Department of Justice Drug Enforcement Administration Northeast Laboratory New York, New York at the time he tested the submitted substances in question. As such, he is

certified, trained and experienced in the determination, testing and analysis of controlled substances, including cocaine and cocaine base. Mr. Cusumano will testify as to his training, experience and education in that regard.

Mr. Cusumano will testify as to the analysis he performed on items of evidence submitted in this case and provided during discovery, including that evidence contained in the identified cases below. Mr. Cusumano will testify, in his opinion, formed through his training, experience and analysis, as to the type and quantity of drug evidence submitted. These opinions will be consistent with the opinions set forth in the lab reports at issue, including:

1. NERL, LIMS NUMBER 2015-SFL2-03124

The aforementioned Report, has been provided to the defense and Mr. Cusumano's qualifications will be provided to the defense.

10. SARAH MURRIN, FORENSIC BIOLOGIST, County Of Erie Department Of Central Police Services Forensic Laboratory, Buffalo, New York

Ms. Murrin will testify that she is a Forensic Biologist employed by the Erie County Central Police Services, Buffalo, New York. As such, she is certified, trained and experienced in the determination, testing and analysis of DNA profiles. Ms. Murrin will testify as to her training, experience and education in that regard.

Ms. Murrin will testify as to the analysis she performed on items of evidence submitted in this case and provided during discovery, including that evidence contained from Item 2 of

Lab Number 13-07197, which was a kilogram wrapper seized from defendant Demetrius Yarborough's home on 22 Carl Street. Ms. Murrin will testify, in her opinion, formed through her training, experience and analysis, about the results of that testing. These opinions will be consistent with the opinions set forth in a lab report which will be issued very shortly. That report, and Ms. Murrin's qualifications will be provided to the defense.

11. DENISE BANTLE, FORENSIC BIOLOGIST, County of Erie Department of Central Police Services Forensic Laboratory, Buffalo, New York

Ms. Bantle will testify that she is a Forensic Biologist employed by the Erie County Central Police Services, Buffalo, New York. As such, she is certified, trained and experienced in the determination, testing and analysis of DNA profiles. Ms. Bantle will testify as to her training, experience and education in that regard.

Ms. Bantle will testify as to the analysis she performed on items of evidence submitted in this case and provided during discovery, including that evidence contained from Item 2 of Lab Number 13-07197, which was a kilogram wrapper seized from defendant Demetrius Yarborough's home on 22 Carl Street and a known buccal swab of defendant Demetrius Yarborough. Ms. Bantle will testify, in her opinion, formed through her training, experience and analysis, that Yarborough cannot be excluded from the mixture found on Item 2. These opinions will be consistent with the opinions set forth in a lab report which will be issued very shortly. That report, and Ms. Bantle's qualifications will be provided to the defense.

12. SPECIAL AGENT THOMAS GALLUCH, Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATFE”) (Buffalo, NY)

ATFE Special Agent Thomas Galluch is an expert witness with regard to the origin of firearms and/or ammunition. Agent Galluch is employed by the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives as a Special Agent. He has received specialized training in firearms and ammunition as a member of the ATFE. Throughout his career, he has examined hundreds of firearms and ammunition samples in order to ascertain their origin and their movement in interstate and/or foreign commerce. Agent Galluch has also testified with regard to the interstate and/or foreign commerce nexus of firearms and ammunition in Federal Grand Juries and in the United States District Court in the Western Judicial District of New York. Agent Galluch has also visited the ATFE firearms reference library, which has over 10,000 firearms, and he attended the ATFE’s advanced firearm nexus school. Agent Galluch has also toured numerous firearms manufacturer facilities and has written numerous reports and provided numerous opinions regarding the interstate nexus of firearms and ammunition. He may testify with regard to the interstate nexus required in the federal prosecution of firearm offenses. Agent Galluch may testify regarding the travel of firearms and ammunition in interstate and/or foreign commerce prior to the defendants’ possession of these items in New York State.

Agent Galluch is a certified interstate nexus expert for the Bureau of Alcohol, Tobacco, Firearms, and Explosives. As such, Agent Galluch will testify as to the interstate nexus of the firearm and ammunition seized from 98 Gillette Avenue in the City of Buffalo on November 2, 2015. SA Galluch will testify that based on the description and his examination of the firearms and ammunition, he can state that none of the items were

manufactured in New York State. Agent Galluch will testify that the firearm and ammunitions in question were manufactured outside of the State of New York, and therefore, travelled in interstate commerce before they were possessed in this case.

13. TARA N. ROSSY, FORENSIC CHEMIST, U.S. Department Of Justice Drug Enforcement Administration Northeast Laboratory, New York, New York

Ms. Rossy will testify that she is a forensic chemist employed by the U.S. Department of Justice Drug Enforcement Administration Northeast Laboratory New York, New York at the time he tested the submitted substances in question. As such, she is certified, trained and experienced in the determination, testing and analysis of controlled substances, including heroin, cocaine and cocaine base. Ms. Rossy will testify as to her training, experience and education in that regard.

Ms. Rossy will testify as to the analysis she performed on items of evidence submitted in this case and provided during discovery, including that evidence contained in the identified cases below. Ms. Rossy will testify, in her opinion, formed through his training, experience and analysis, as to the type and quantity of drug evidence submitted. These opinions will be consistent with the opinions set forth in the lab reports at issue, including:

1. NERL, LIMS NUMBER 2015-SFL2-06249
2. NERL, LIMS NUMBER 2015-SFL2-062419
3. NERL, LIMS NUMBER 2015-SFL2-062756
4. NERL, LIMS NUMBER 2015-SFL2-06758

The aforementioned Reports, have been provided to the defense and Ms. Rossy's qualifications will be provided to the defense.

DATED: Buffalo, New York, September 24, 2018.

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